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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1352

IOWA INDEPENDENT BANKERS, an Iowa Nonprofit Corporation,

Petitioner,

vs.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, et al.,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

MEMORANDUM OF INTERVENOR-RESPONDENT NORTHWEST BANCORPORATION

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Opinion Below

The decision of the court below is reported at 511 F. 2d 1288 (D.C. Cir. 1975) (the printing of the decision in Appendix A to the Petition contains errors). The decision of the Board of Governors of the Federal Reserve System is reported at 38 Fed. Reg. 21531 (1973).

Issue Presented

Whether an approval by the Board of Governors of the Federal Reserve System of acquisition of banks by a bank holding company, based in part upon a state statute which distinguishes between out-of-state holding companies having some pre-existing stake in the state's banking system and those having no such stake, is a denial of any person's fourteenth amendment right to equal protection of the laws?

Statement of the Case

1. *The Parties.* Northwest Bancorporation ("Northwest"), is a bank holding company registered with the Board of Governors of the Federal Reserve System ("The Board"), under the Bank Holding Company Act. At the time of the instant applications, Northwest controlled four banks in Iowa which had been owned by Northwest since the late 1920's. Although it is the largest bank holding company in Iowa, Northwest's four Iowa banks had deposits constituting only 6.3 percent of the total bank deposits in the State. (A27-28)[1]

The Board is the federal agency charged with administration of the Bank Holding Company Act. *See* 12 U.S.C.A. §§1841(f), 1842-44, 1847.

Iowa Independent Bankers ("IIB") is an association of over 400 Iowa banks which call themselves "independent." The IIB member banks have deposits constituting over one-half of the total bank deposits in the State. The stated purpose of the association is "to preserve competition and to

[1]The order of the Board is reprinted in Appendix B to the Petition and the reference herein to the order are to that Appendix. There are also references herein to the Record in the court below ("R").

prevent undue concentration in the field of banking" (R211, 220, 388).[2]

2. *The Board's Order.* On August 2, 1973, the Board issued its order approving applications by Northwest to acquire two Iowa Banks.[3] The Board found that approval "would not result in any significant increase in the concentration of banking resources in Iowa," that the acquisitions would have procompetitive effects and would not eliminate any actual or likely future competition, that Northwest's financial and managerial resources would strengthen the two banks and that the acquisitions would enhance the two banks' ability to serve the communities' convenience and need. Accordingly, the Board held that "the proposed acquisitions would be in the public interest" (A28-31).[4]

The Board then examined the pertinent 1972 Iowa statute which provided that:

> "Nothing in this division shall be construed to authorize a bank holding company which is with respect to the state of Iowa an 'out-of-state bank holding company' . . . to acquire any . . . interest in . . . any bank in this state unless such bank holding company was on January 1, 1971, registered with the federal reserve board as a bank holding company, and on that date owned at least two banks in this state." Iowa Code Ann. §524.1805 (Supp. 1974-75).

[2]IIB has adopted resolutions opposing "expansion of multibank holding companies" and encouraging "the regulators on the national level to respect the historic right of the states to control and regulate . . . the formation and expansion of multibank holding companies." THE INDEPENDENT BANKER, Aug. 1973, at 27.

[3]Both applications had the support of the Iowa Superintendent of Banking, who stated that the acquisitions were in compliance with Iowa law, would benefit the respective banks and their customers, and would not threaten the competitive structure of banking (R201, 380-81).

[4]These findings were not contested by IIB in the Court of Appeals. 511 F.2d at 1292 n. 3.

Upon determining that Northwest owned at least two Iowa banks on January 1, 1971, the Board concluded that the statute authorized the acquisitions, but declined to pass upon IIB's claim that the Iowa statute was unconstitutional (A27-28, 32 & n. 6).

3. *The Court of Appeals' Decision.* On February 7, 1975, the United States Court of Appeals for the District of Columbia Circuit denied IIB's petition to set aside the Board's order. In an opinion by Judge Tamm, joined by Judges Leventhal and Merhige, the court sustained the constitutionality of the Iowa statute under both the federal and the state constitutions.

Argument

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

The reasons for denial of the petition, which should be apparent from the Court of Appeals' well reasoned and thorough opinion, are summarized below.

1. The Decision Below Was Correct and Consistent with Decisions of This Court

The Court of Appeals, relying upon the equal protection decisions of this Court where fundamental rights and suspect classifications were not involved, properly limited its review to determining whether the Iowa statute bore a rational relationship to a legitimate state purpose. 511 F.2d at 1294. *See, e.g., Village of Belle Terre v. Boraas,* 416 U.S. 1, 6-8 (1974); *Dandridge* v. *Williams,* 397 U.S. 471, 484-86 (1970).

The court then examined the statute in question and its

legislative history and found the legitimate purpose and the rational relationship. The purpose of the Iowa statute, the court said, was "to allow all pre-existing bank holding companies, whether in-state or out-of-state, to compete on an equal basis, while preventing a new influx of out-of-state bank holding companies into Iowa." 511 F.2d at 1295. This legitimate purpose was then shown by the court to have a rational relationship to the distinction drawn in the statute between those out-of-state holding companies having a pre-existing stake in the Iowa banking system and those that did not. *Id.* at 1294-95.[5]

This result, as the court below pointed out, is fully consistent with the decisions of this Court upholding grandfather clauses in all sorts of statutes. *Id.* at 1295. *See, e.g., United States* v. *Maryland Savings-Share Ins. Corp.,* 400 U.S. 4 (1970); *Sampere* v. *New Orleans,* 279 U.S. 812 (1929), *aff'g per curiam,* 166 La. 776, 117 So. 827 (1928); *Watson* v. *Maryland,* 218 U.S. 173 (1910).

The result below is also consistent with this Court's pronouncements that legislatures may properly think evils in the same field may be of different proportions requiring different remedies, *Tigner* v. *Texas,* 310 U.S. 141 (1940), that legislatures may select one phase of a field and apply a remedy, neglecting others, and that reform takes one step at a time, *Semler* v. *Oregon State Bd. of Dental Examiners,* 294 U.S. 608 (1935); *Geduldig v. Aiello,* 417 U.S. 484 (1974); and that legislatures need not draw statutes to encompass hypothetical situations that may never become

[5]Although the Iowa statute speaks in terms of out-of-state holding companies controlling two or more Iowa banks, in fact Northwest was the only out-of-state holding company owning any Iowa banks at the critical date. 511 F.2d at 1294.

reality, *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61 (1911).[6]

The only case that IIB can dredge up arguably to support its contentions is *Morey* v. *Doud*, 354 U.S. 457 (1957). But the statutory schemes here and in *Morey* are quite different. In *Morey*, there was an express exemption from a continuing regulatory scheme for only one of many existing companies. Here, on the other hand, as the court below pointed out, the statute was "not designed to bestow a benefit upon one competitor over all others, but merely to allow Northwest to compete on an equal basis with other Iowa banks." 511 F.2d at 1295-96. Thus, IIB's reliance on *Morey* is misplaced.[7]

2. There Is No Conflict in Decisions of the Courts of Appeal

IIB urges that certiorari be granted because of the pendency in this Court of *City of New Orleans* v. *Dukes*, 43 U.S.L.W. 3550 (No. 74-775), *appealing from*, 501 F.2d 706 (5th Cir. 1974). (Petition 7.)

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[6]Indeed, since IIB and its members are not in the class allegedly discriminated against and have not sustained some direct injury as a result of the application of the statute, serious questions of ripeness and standing would be potential barriers to this Court's consideration of the merits of IIB's petition. *Compare* 511 F.2d at 1293-94. *See, e.g., Brodrick v. Oklahoma*, 413 U.S. 601, 610-11 (1973); *Roe v. Wade*, 410 U.S. 113, 127-29 (1973); *Laird* v. *Tatum*, 408 U.S. 1 (1972); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 166-68 (1972); *Sierra Club* v. *Morton*, 405 U.S. 727 (1972); *Abbott Labs* v. *Gardner*, 387 U.S. 136 (1967); *Poe v. Ullman*, 367 U.S. 497 (1961).

[7]It should be noted that the *Morey* case, a six-to-three decision, seems contrary to this Court's subsequent decisions rejecting equal protection challenges to economic regulations, *e.g., Ferguson* v. *Skrupa*, 372 U.S. 726 (1963), and to this Court's repeated reluctance to strike down economic legislation, *Dandridge* v. *Williams*, 397 U.S. 471 (1970); *North Dakota State Bd. of Pharmacy* v. *Snyder's Drug Stores, Inc.*, 414 U.S. 156 (1973).

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But an analysis of the *Dukes* case reveals no inconsistency in the Circuits and thus no need to grant certiorari here. First, as the court below noted, the *Dukes* ordinance gave a monopoly to one person and forced out an existing competitor, while in the instant case, all bank holding companies similarly situated are treated the same and allowed to acquire Iowa banks, and no existing competitor was put at any disadvantage by the statute. *See* 511 F.2d at 1295-96 n. 7. Second, entirely different regulatory schemes are involved in *Dukes* and in the instant case. Indeed, in the instant case, the challenged statute relates to the complex, ever-evolving federal-state regulation of banking and bank holding companies, whereas in *Dukes* the subject-matter was the relatively simple, static municipal regulation of street peddling. Third, here, but not in *Dukes*, the court found a rational relationship between the statutory distinction and legitimate purpose. Fourth, in the instant case, no person within the jurisdiction of the state has been discriminated against or has suffered direct injury as a result of the statutory dstinction whereas the converse was true in *Dukes*.

3. There Is No Practical Occasion or Reason for Review of This Case by This Court.

Contrary to the suggestion of IIB (Petition 7-8), there is no practical reason for this Court to review this case, as the Iowa statute is the only statute of its kind in the United States.

Conclusion

For the foregoing reasons, Intervenor-Respondent Northwest Bancorporation respectfully requests that this Court deny the petition for a writ of certiorari.

Dated June 16, 1975.

Respectfully submitted,

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